

OFFICIAL

Provision: HCFA-PM-95-4 (HSQB)
June 1995

Attachment 4.35-C

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: New York

ELIGIBILITY CONDITIONS AND REQUIREMENTS

Enforcement of Compliance for Nursing Facilities

Temporary Management: Describe the criteria (as required at §1919(h)(2)(A) for applying the remedy.

☐ Specified Remedy

(Will use the criteria and notice requirements specified in the regulation).

☒ Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

Appointment of Temporary Management (Alternative)

New York State provides under §2806-b of the Public Health Law pertaining to caretakers and §2810 of the Public Health Law pertaining to receivers, for management of a facility to assure resident health and safety and an orderly closure or correction of requirements. These receivers and caretakers must pass a character and competence review.

The caretaker/receiver remedy described above is being submitted as an alternative remedy. It is more stringent than OBRA '87 requirements for facilities with care problems so serious as to warrant new management imposed by the state and that control not be returned to the same operator. Our experience has demonstrated great success in gaining court support for the appointment of caretakers or receivers under our current provisions. In instances of immediate jeopardy, §2806-b(c) calls for the caretaker to be appointed under the provisions specified in §2810(2). This procedure allows the state's request for a caretaker appointment to be before a Supreme Court judge 5 days after notice of the caretaker action is given to the provider. The notice is given immediately upon the state decision that a caretaker is necessary.

Over the last 10 years, 25 facilities have had receivers utilized on a voluntary or involuntary basis to resolve care issues.

TR No. **05-33**
Supersedes
TR No. New

MAR 07 1997
Approval Date: _____

Effective Date: JUL 01 1995